

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff

v.

THE ESTATE OF HARRY CROSSLEY,
and RUTH CROSSLEY,

Defendants.

Civil Action No. 5:08-cv-197

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607(a), as amended ("CERCLA"), seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Crossley Farm Superfund Site in Huffs Church, Hereford Township, Berks County, Pennsylvania ("the Site").

B. The Defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the Complaint.

C. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED,
ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, and upon Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Consent Decree" shall mean this Consent Decree and appendices "A" and "B" attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Future Response Costs" shall mean all Response Costs which are not Past Response Costs as defined herein.

h. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

i. "Matters Addressed" shall mean all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or any other person with respect to the Site.

j. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

k. "Parties" shall mean the United States, and Settling Defendants.

l. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has incurred or will incur in connection with the Site through the date of lodging, plus accrued Interest on all such costs through such date.

m. "Plaintiff" shall mean the United States .

n. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

o. "Settling Defendants" shall mean: 1) the Estate of Harry Crossley; and 2) Ruth Crossley.

p. "Site" shall mean the Crossley Farm Superfund site, encompassing approximately 209 acres, located approximately 7 miles southwest of Allentown at Huffs Church, Hereford Township, Berks County, Pennsylvania, and shown on the maps included in "Appendix A" and "Appendix B".

q. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. PAYMENT OF PAST AND FUTURE RESPONSE COSTS

1. Settling Defendants contend that they have a limited ability to pay Past and Future Response Costs incurred by the United States in connection with the Site, and pursuant to

Section 107(a) of CERCLA, 42 U.S.C. §9607(a). Settling Defendants submitted to EPA financial information to support their contention. EPA has reviewed this information, and in reliance on the truth and completeness of that information and the Settling Defendants' representations, EPA enters into this Consent Decree pursuant to Section 107(a) of CERCLA, 42 U.S.C. §9607(a), and in accordance with EPA's policy as set out in the September 30, 1997 memorandum titled "General Policy on Superfund Ability to Pay Determinations". Settling Defendants, by signing this Consent Decree, certify that, to the best of their knowledge, information, and belief:

a. The financial data and information provided to EPA fairly, accurately, and materially sets forth the Settling Defendants' financial circumstances; and

b. Settling Defendants' financial circumstances have not materially changed between the time the data and information were submitted to EPA and the time Settling Defendants sign this Consent Decree.

2. EPA's entry into this Consent Decree is made in express reliance and is dependent upon the Settling Defendants' financial certifications contained in paragraph 1 a. and b. above. If at any time the United States determines that Settling Defendants' financial certification was false, inaccurate, or incomplete as to any representation, EPA reserves the right to pursue further relief from the Settling Defendants including, but not limited to, reimbursement of all Past and Future Response Costs incurred at or in connection with the Site which have not been recovered or, if EPA deems it appropriate, to institute further action based upon CERCLA or the terms of this Consent Decree and any violation thereof.

3. Should EPA pursue further relief or institute further action pursuant to paragraph 2 above, Settling Defendants waive their right to assert any statute of limitations, laches, waiver, or estoppel defenses to such petitions or such further action. This reservation shall be in addition to and not in place of any remedies EPA may have for false statements made to the United States including, but not limited to the sanctions provided by 18 U.S.C. § 1001.

4. Payment of Past and Future Response Costs to EPA. Within 30 days of entry of this Consent Decree, Settling Defendants shall pay to EPA \$155,000, plus any Interest that may accrue thereon, subject to the terms provided in this Consent Decree.

5. Payment by Settling Defendants shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with EFT instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the Eastern District of Pennsylvania following lodging of the Consent Decree at the address and phone number below:

U.S. Department of Justice
United States Attorney

Eastern District of Pennsylvania
Financial Litigation Unit
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106-4476
(215) 861-8200

Any payments received by the Department of Justice after 4:00pm (Eastern Time) will be credited on the next business day.

6. At the time of payment, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill Identification Number 03 S2, DOJ case number 90-11-2-07484, and the civil action number assigned to this case by the Court and to:

Docket Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Barbara Borden (3PM30)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

7. The total amount (100%) to be paid pursuant to Paragraph 4 by Settling Defendants shall be deposited in the Crossley Farm Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

VI. FAILURE TO COMPLY WITH CONSENT DECREE

8. Interest on Late Payments. If any Settling Defendant fails to make any payment under Paragraph 4 (Payment of Response Costs) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

9. Stipulated Penalty.

a. If any amounts due under Paragraph 4 are not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 8, \$500 for every day that

such payment is late. If Settling Defendants fail to comply with any other requirement of this Consent Decree in a timely and complete manner, Settling Defendants shall pay to EPA as a stipulated penalty \$500 for every day that the violation continues unabated.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the parties making payment, the Site name, the EPA Region and Site Spill ID Number 03 S2, DOJ Case Number 90-11-2-07484, and the civil action number. Settling Defendants shall send the check (and any accompanying letter) to:

U.S. E.P.A., Region III
Attention: Superfund Accounting
P.O. Box 360515
Pittsburgh, PA 15251-6515

c. At the time of each payment, Settling Defendants shall also send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions). Such notice shall reference the EPA Region and Site/Spill ID Number 03 S2, DOJ Case Number 90-11-2-07484, and the civil action number and be sent to:

Docket Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Barbara Borden (3PM30)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due, or the day a violation occurs, and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

10. If the United States brings an action to enforce this Consent Decree, Settling

Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

11. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

12. The obligations of Settling Defendants to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the failure of any Settling Defendant to make the payments required under this Consent Decree, the remaining Settling Defendant shall be responsible for such payments.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section V or from performance of any other requirements of this Consent Decree.

VII. COVENANT NOT TO SUE BY PLAINTIFF

14. Covenant Not to Sue by United States. Except as specifically provided in Section VIII (Reservations of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past or Future Response Costs. This covenant not to sue shall take effect upon receipt by EPA of all payments required by Section V, Paragraph 4 (Payment of Response Costs) and any amount due under Section VI (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY UNITED STATES

15. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiff in Paragraph 14. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past or Future Response Costs;

c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;

d. criminal liability; and

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

IX. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

16. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Past or Future Response Costs or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the response actions at the Site for which the Past or Future Response Costs were incurred, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past or Future Response Costs.

17. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

18. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

19. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "Matters Addressed" in this Consent Decree.

20. Each Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

21. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VII.

XI. SITE ACCESS AND INSTITUTIONAL CONTROLS

22. If the Site, or any other property where access is needed to implement response activities at the Site, is owned or controlled by either or both of the Settling Defendants, such Settling Defendant(s) shall, commencing on the date of lodging of this Consent Decree, provide the United States and its representatives, including EPA and contractors, with access at all reasonable times to the Site or to such other property, for the purpose of conducting any response activity related to the Site including, but not limited to, the following activities:

a. Monitoring, investigation, removal, remedial or other activities at the Site. At present EPA knows that it will need access to four separate areas of the Site in order to conduct its remedial action: a) a 50 foot wide parcel leading from Huffs Church Road to a parcel where a Water Treatment Plant will be built; b) a parcel measuring approximately 10 acres on which a Water Treatment Plant will be built; c) a parcel leading to Bass Pond; and d) a parcel leading to Bass Pond from Huffs Church Road. A map indicating these areas to which access will be needed is attached as "Appendix B" to this Consent Decree. Settling Defendants agree to grant access to EPA and its agents and representatives for these purposes;

b. Verifying any data or information submitted to the United States;

c. Conducting investigations relating to contamination at or near the Site;

d. Obtaining samples;

e. Assessing the need for, planning, or implementing response actions at or near the Site;

f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XII (Access to Information); and

g. Assessing Settling Defendants' compliance with this Agreement.

Settling Defendants shall also use best efforts to ensure that any subsequent owners of the Site provide access to EPA.

23. Settling Defendants and any subsequent owners of the Site shall comply with, and shall use best efforts to ensure that any subsequent owners of the Site shall comply with the Order issued on March 25, 2005 and July 6, 2005 by the Commonwealth of Pennsylvania pursuant to Sections 512 (a) and 1102 of the Pennsylvania Hazardous Sites Cleanup Act ("HSCA"), 35 P.S. §§ 6020.512(a) and 6020.1102, providing that Settling Defendants and any subsequent owners not interfere with EPA's remedial response action.

24. Settling Defendants, pursuant to EPA's Record of Decision ("ROD") issued September 28, 2001, must not install any groundwater extraction wells at the Site, nor use any contaminated groundwater at the Site unless treatment units are installed and maintained to ensure that any water used has contaminant levels at or below Safe Water Drinking Act ("SWDA") Maximum Contaminant Levels ("MCLs"). See 40 C.F.R. Part 141.

25. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XII. ACCESS TO INFORMATION

26. Settling Defendants shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

27. Confidential Business Information and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the records submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are

submitted to EPA, or if EPA has notified Settling Defendants that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such records without further notice to Settling Defendants.

b. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing records, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to the Site shall be withheld on the grounds that they are privileged.

28. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XIII. RETENTION OF RECORDS

29. Until ten (10) years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

30. After the conclusion of the ten-year document retention period in the preceding paragraph, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such records to EPA. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor. However, no records created or generated pursuant to the requirements of this or any other settlement with the EPA pertaining to

the Site shall be withheld on the grounds that they are privileged.

31. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XIV. NOTICES AND SUBMISSIONS

32. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Defendants in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendants, respectively.

As to the United States/DOJ:

Chief, Environmental Enforcement Section
 Environment and Natural Resources Division
 U.S. Department of Justice (DJ #90-11-2-07484)
 P.O. Box 7611
 Washington, D.C. 20044-7611

As to EPA:

Gail P. Wilson (3RC43)
 Senior Assistant Regional Counsel
 U.S. Environmental Protection Agency, Region III
 1650 Arch Street
 Philadelphia, PA 19103-2029

Barbara Borden (3PM30)
 Office of the Regional Comptroller
 U.S. Environmental Protection Agency, Region III
 1650 Arch Street
 Philadelphia, PA 19103-2029

Roy Schrock (3HS22)
 Remedial Project Manager

U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

As to Settling Defendants:

E. Kenneth Nyce, Esquire
105 East Philadelphia Avenue
Boyertown, PA 19512

XV. RETENTION OF JURISDICTION

33. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVI. INTEGRATION/APPENDICES

34. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Defendants with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is a general map of the Site; and "Appendix B" is a map of the Site indicating areas where access is necessary to conduct remedial response actions.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

35. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

36. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVIII. SIGNATORIES/SERVICE

37. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

38. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

39. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XIX. FINAL JUDGMENT

40. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED, THIS ____ DAY OF _____, 2008 .

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Estate of Harry Crossley, et al., Civil Action No. _____ relating to the Crossley Farm Superfund Site, Huffs Church, Berks County, Pennsylvania.

FOR THE UNITED STATES OF AMERICA:

RONALD J. TENPAS
Acting Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
Washington, D.C. 20530

BRUCE GELBER
Section Chief
Environmental Enforcement Section

ROBERT E. LEFEVRE
Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
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JAMES G. SHEEHAN
Chief, Civil Division
United States Attorney's Office
Eastern District of Pennsylvania

Date: _____

MICHAEL BLUME
Assistant United States Attorney
Eastern District of Pennsylvania
615 Chestnut Street
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Date: _____

DONALD S. WELSH
Regional Administrator
Region III
U.S. Environmental Protection
Agency
1650 Arch Street
Philadelphia, PA 19103-2029

Date: _____

WILLIAM C. EARLY
Regional Counsel
Region III
U.S. Environmental Protection
Agency
1650 Arch Street
Philadelphia, PA 19103-2029

Date: _____

GAIL P. WILSON
Senior Assistant Regional Counsel
Region III
U.S. Environmental Protection
Agency
1650 Arch Street
Philadelphia, PA 19103-2029

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Estate of Harry Crossley, et al relating to the Crossley Farm Superfund Site in Huffs Church, Berks County, Pennsylvania.

FOR DEFENDANT ESTATE OF HARRY CROSSLEY

Date: _____

[NAME]
[ADDRESS]

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: _____

Title: _____

Address: _____

FOR DEFENDANT RUTH CROSSLEY

Date: _____

[NAME]
[ADDRESS]

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: _____

Title: _____

Address: _____

APPENDIX "A"

APPENDIX "B"

